

REMARKS

Claims 1, 9, 17 and 19 are amended, claim 8 was previously cancelled, and claims 1-7 and 9-21 are pending in the present application. No new matter is introduced. Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and following remarks.

Claims 1-7 and 9-21 are rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Application Publication No. 2002/0093823, to Rohlfing et al. (hereinafter, "Rohlfing"), in view of U.S. Patent No. 5,980,069, to Guerrero. Independent claim 1, as amended, recites, *inter alia*, "a cover configured to substantially prevent the light from the flight lighting arrangement from being seen from the ground in a region of more than 0 m to approximately 2000 m around the wind power installation." In contrast, the cited references, either taken alone or in combination, do not teach, suggest, or motivate the cover of claim 1. The Office Action correctly recognizes that Rohlfing does not disclose a cover preventing a substantial amount of the light from being seen from the ground in a region of more than 0 meters to approximately 2000 meters. However, it is asserted that Guerrero makes up for this deficiency.

As discussed in the Amendment filed October 30, 2007 (hereinafter, "October Amendment"), the beacon light deflectors in Guerrero include a structure that deflects the beacon light; however, they do not prevent the light from being seen on the ground adjacent the wind turbine to 2000 m therefrom. This is because the deflectors in Guerrero include a centrally located aperture defined by the inner peripheral edge 14. Guerrero, column 1, lines 62-64, and column 3, lines 5-7. This inner peripheral edge is more clearly illustrated in Figure 3 and labeled with reference numeral 114. Accordingly, the beacon light in Guerrero is visible from the ground in a region extending from adjacent the wind turbine base to as far as the light intensity allows.

Although Figure 1 of Guerrero illustrates the light shield assemblies 48, 50 mounted on a horizontally extending beam, the beam does not block the opening 14. This is because the base of the lowest deflector of the four deflectors 12, 112, 212, 312, is not flush with the top surface of the beam. As illustrated in Figures 2 and 3, the plurality of deflectors 12, 112,

212, 312 are fixed relative to each other via connecting members 18, which in turn are supported on base members 22, 24, which also do not block the openings 14, 114. The base members 22, 24 have a thickness, and thus, light is clearly visible through the openings 14, 114 from below the lowest deflector and between the base members 22, 24, such that it can be seen from the ground in an area adjacent the base of the tower and extending to as far as the light intensity allows. Hence, the invention in Guerrero somewhat reduces the amount of light seen at ground level. Guerrero, column 1, lines 38-40. In contrast, the cover of claim 1 substantially prevents the light from the lighting arrangement from being seen at all in the recited region on the ground. Claim 1 is currently amended to clarify that the cover configured to substantially prevent the light from the flight lighting arrangement from being seen in the recited region. This feature is supported in the specification at least on page 3, lines 10 to 16.

Guerrero was previously cited in the last Office Action for the same proposition as it is being relied upon in the pending Office Action, and in response, the above arguments with respect to the central openings 14, 114 in the Guerrero deflectors were made in the Remarks section of the October Amendment. However, in the pending Office Action it is summarily concluded that Guerrero teaches the cover as claimed and that Applicant's arguments are moot in view of the new grounds for rejection. But, this does not change the teachings of Guerrero. There is no showing in the references as combined to teach the claimed invention. "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (*cited by*, *KSR Int'l Co.*, 127 S.Ct. 1727 at 1740-1741).

Applicant was the first to recognize the desirability of a cover that substantially prevents light from a flight lighting arrangement from being seen at the base of a wind power installation to 2000 m.

A proper determination of obviousness must be made in view of all factual information and based on whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time when the invention was unknown and just before it was made. *See* MPEP § 2142. Impermissible hindsight must be avoided and obviousness

“must be reached on the basis of the facts gleaned from the prior art.” *See* MPEP § 2142. In the present instance, both Rohlfing and Guerrero teach lighting arrangements, the light from which can be seen in a region from the base of a wind power installation to as far as the light intensity allows. Therefore, concluding that the cover of claim 1, which prevents such exposure of light, is obvious, evidences hindsight after being exposed to such information from the present specification. Accordingly, claim 1, and dependent claims 2-7 and 9-18, which are dependent from claim 1, are allowable.

Independent claim 9 recites, *inter alia*, “a cover positioned beneath the flight lighting arrangement that substantially blocks the light of the flight lighting arrangement from a region below the cover and in an area of more than 0 m to approximately 2000 m around the wind power installation.” As discussed above, Rohlfing and Guerrero fail to disclose a cover that blocks the light of a flight lighting arrangement from a region below the cover and in an area of more than 0 m to approximately 2000 m around the wind power installation. In fact, as elaborated in the foregoing discussion, the light in the inventions in Rohlfing and Guerrero are visible from the base of a wind power installation on which they are installed, particularly, in Rohlfing because the light radiates horizontally above such a region, and in Guerrero because it seeps through the openings 14, 114. Accordingly, claim 9, and dependent claims 10-18, which are dependent from claim 9, are also allowable.

Claim 19, recites, *inter alia*, “a cover configured to substantially prevent the light from the flight lighting arrangement from being seen from the ground in a region of more than 0 m to approximately 700 m around the wind power installation. Rohlfing and Guerrero fail to disclose a cover that substantially prevents light from a flight lighting arrangement from being seen from the ground in a region within 700 m around the wind power installation. The beacon light in Guerrero can be seen from the ground in at least part of this region as it leaks through the openings 14, 114, as discussed above.

Independent claim 20 recites, *inter alia*, “a cover positioned with respect to the flight lighting arrangement to permit the light from the flight lighting arrangement be visible only at an angle of approximately -10 to 90° measured from the flight lighting arrangement with respect to the horizontal.” Emphasis added. Accordingly, the light from the flight lighting

arrangement as claimed in claim 20 is not visible at any other angle, including the -90° angle corresponding to the base of a wind power installation on which a lighting arrangement according to claim 20 is installed. As demonstrated above, the light in both Rohlring and Guerrero is visible from the base of a wind power installation, which is positioned at an angle of -90° with respect to the horizontal, contributing to light pollution on the ground. Therefore, claim 20 is also allowable.

Independent claim 21 recites, *inter alia*, “a cover positioned beneath the flight lighting arrangement that substantially blocks the light of the flight lighting arrangement from a region below the cover and more than 0 m to approximately 700 m around the wind power installation.” In contrast, as demonstrated above, the horizontally radiating light in Rohlring and the beacon light in Guerrero can be seen from the base of a wind power installation up to as long as the intensity of the light allows. Accordingly, claim 21 is also allowable.

In addition, there must be a motivation to combine the references as proposed for a showing of obviousness. If the proposed modification renders the prior art invention being modified unsatisfactory for its intended purpose or if it changes the principal of operation thereof, then there is no suggestion or motivation to make the proposed modification. MPEP 2143.01.IV and 2143.01.V. The proposed modification in the present case is to modify Rohlring to incorporate the frustoconically shaped elements of Guerrero.

However, the intended purpose and principal of operation of Rohlring is to emanate an intense light parallel to the horizontal. *See* Rohlring, p. 3, ¶ [0038], and Figures 1 and 2. If the reflector bodies 17, 18 of the cover 16 in Rohlring were modified to take on the structure disclosed for the frustoconical elements in Guerrero, the light would no longer radiate horizontally; rather it will radiate vertically upward and also downward toward the base of the wind power installation through the openings 14, 114 formed in the frustoconical elements about the light. *See* Guerrero, Figure 3. Accordingly, such a modification would render Rohlring unsatisfactory for its intended purpose and change its principal of operation, and thus, there is no motivation to combine the cited references.

It is respectfully submitted that all of the claims remaining in the application are now allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

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The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,
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